



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Walter Murchison  
County Attorney, and  
Honorable Ben Charlie Chapman  
District Attorney  
Haskell, Texas

Dear Sirs:

Opinion No. 0-3735

Re: In the event the county clerk receives his maximum compensation of \$3000. and is paid the mentioned \$350., will that \$350. be excess fees or will he be allowed to retain the same and make a total maximum compensation of \$3350. instead of \$3000. allowed by statute, and related questions?

Your recent request for an opinion of this Department on the questions stated herein has been received.

We quote from your letter as follows:

"We have been requested by certain officials for an opinion with reference to the following questions:

"One - Are the following earnings of the County Clerk in a county of this size allowable in excess of the maximum fees provided for by law: First, keeping records \$100.00. Second, keeping finance ledger \$250.00. In other words, in the event the county clerk receives his maximum of \$3,000.00 and is paid the \$350.00 just mentioned will that \$350.00 be excess fees or will he be allowed to retain the same and make his total maximum compensation \$3,350.00 instead of the \$3,000.00 allowed by statute?

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"In connection with the above question I call your attention to Art. 3931 which allows not to exceed \$100.00 for keeping records, and Art. 1644 which allows not to exceed \$250.00 for keeping finance ledger, and your attention is also called to those articles of the statute setting out the maximum fees for the county clerk in a county of this size.

"The second question requested is, can the Commissioner's Court pay from the General Fund of the county a part of the county clerk's deputies salaries when the clerk earns the maximum fees allowed by law?

"The third question requested is as follows; Is the Commissioner's Court allowed to pay regular county clerk deputies in part or in whole out of the General Fund of the county?

"In connection with the second and third questions requested your attention is called to Art. 3399 of the Revised Civil Statutes, particularly the following:

"In connection with the second and third questions requested your attention is called to Art. 3399 of the Revised Civil Statutes, particularly the following: 'The amount of salaries paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies and clerks shall be paid out of the fees earned by such officer.'"

Haskell County has a population of 14,906 inhabitants according to the 1940 Federal Census, and the county officials of said county are compensated on a fee basis.

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Article 1844, Vernon's Annotated Civil Statutes,  
provides:

"The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger and making the quarterly statement required by this title, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners court out of the general fund of the county; provided, the same be not less than one hundred dollars nor more than two hundred and fifty dollars per annum."

Article 2931, Vernon's Annotated Civil Statutes,  
reads as follows:

"At each term of his court the county judge shall inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court in the care and preservation of the records of his office, in making and keeping necessary indexes thereto, and other labor of a like class, and allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge."

Article 2932, Vernon's Annotated Civil Statutes,  
provides in part as follows:

"For all ex-officio services in relation to roads, bridges and ferries, issuing jury script, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar docket, keeping records of trust funds, filing and docketing all papers for Commissioners' Court, keeping road overseers' books and lists of hands, recording all collection returns and delinquent insolvents, recording county treasurer's reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for to be paid upon the order of the Commissioners' Court out of the treasury, the county clerk shall receive such sums as the Commissioners' Court may determine under the provisions of Article 2993, to be paid quarterly. . . ."

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Articles 3883 and 3891, Vernon's Annotated Civil Statutes, read in part as follows:

"Article 3883. Except as otherwise provided in this act, the annual fees that may be retained by precinct, county and district officers mentioned in this article shall be as follows:

"1. In counties containing twenty-five (25,000) thousand or less inhabitants: county judge, district or criminal district attorney, sheriff, county clerk, county attorney, district clerk, tax collector, tax assessor, or the assessor and collector of taxes, twenty four hundred (\$2400.) dollars each; justice of the peace and constable twelve hundred (\$1200.) dollars each."

"Article 3891. Each officer named in this chapter shall first out of current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover cost of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amount above specified, same shall be deemed excess fees, and shall be disposed of in the manner herein-after provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to three thousand dollars (\$3,000.). . . ."

In addition, you referred to Article 3899, Vernon's Annotated Civil Statutes, relating to monthly expense accounts, which reads in part as follows:

"The amount of such expenses, together with the amount of salaries paid to assistants, deputies and clerks, shall be paid out of the fees earned by such officer."

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In view of the foregoing statutes, the maximum salary of the county clerk of Haskell County can in no event exceed the sum of \$3000. per year. In the event the county clerk receives the maximum salary of \$3000. and is paid the \$350. as above mentioned, in addition to his maximum compensation, said \$350. would be to that extent an amount in excess of the total sum the county clerk may legally retain as compensation for one year.

With reference to your second and third questions your attention is directed to our opinion No. 0-65, which states among other things:

"With reference to salaries of deputies, assistants, etc., of the sheriff's and clerk's offices, it is our opinion the provisions of Article 3891 and 3899, supra, likewise apply and their compensation must be derived from the fees of office."

We are enclosing a copy of this opinion for your information.


In view of the above mentioned statute and the opinion quoted from, it is our opinion that your second and third questions should be answered in the negative and they are so answered.

Trusting that the foregoing fully answers your inquiry, we are

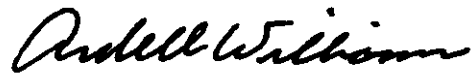
Yours very truly

APPROVED JUL 22, 1941

ATTORNEY GENERAL OF TEXAS

  
FIRST ASSISTANT  
ATTORNEY GENERAL

By



Ardell Williams  
Assistant

AW:ABM

ENCLOSURE

W.J.F.

